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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re N.Q. et al., Persons Coming Under the Juvenile Court Law.	B314168
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. W.A. et al., Defendants and Appellants.	Los Angeles County Super. Ct. Nos. 18CCJP06240A, 18CCJP06240B

APPEALS from orders of the Superior Court of Los Angeles County. Pete R. Navarro, Judge Pro Tempore of the Juvenile Court. Conditionally affirmed and remanded.

Carolyn S. Hurley, under appointment by the Court of Appeal, for Defendant and Appellant W.A.

John P. McCurley, under appointment by the Court of Appeal, for Defendant and Appellant K.Q.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant N.H.

Rodrigo A. Castro-Silva, County Counsel, Kim Nemoy, Assistant County Counsel, Rachel Kleinberg, Deputy County Counsel, for Plaintiff and Respondent.

Mother, W.A., and fathers, K.Q. and N.H., appeal the juvenile court's orders terminating their parental rights to two children. K.Q. contends the court erred in finding the beneficial parental relationship exception to adoption did not apply. Mother and N.H. separately contend the court and the Los Angeles County Department of Children and Family Services (DCFS) failed to comply with their duties of initial inquiry under the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.) (ICWA) and related state law. We reject K.Q.'s arguments but agree with the other parents that DCFS's and the court's inquiries were inadequate. Accordingly, we conditionally affirm the court's orders and remand the matter for the limited purpose of ensuring ICWA compliance.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and K.Q. have one child together, N.Q., who was born in September 2015. In April 2017, the juvenile court took jurisdiction over N.Q. after finding mother and K.Q. have a history of engaging in physical altercations, and K.Q. suffers mental and emotional problems. The court terminated jurisdiction with a family law order granting mother sole custody of N.Q. The court granted K.Q. monitored visitation on weekends.

Mother and N.H. have one child together, L.H., who was born in June 2017.

On September 21, 2018, DCFS received a report that N.Q. had suffered a bruised eye, swollen ears, and a cut lip while in mother's care. The reporter suspected N.Q. had been physically abused.

N.Q.'s paternal aunt told DCFS she noticed the injuries after she picked up the child from mother for a visit with K.Q. The aunt and K.Q. took N.Q. to the hospital. According to the aunt, N.Q. had previously suffered bruises while in mother's care, which she and K.Q. had reported to the police.

The doctor who examined N.Q. determined he had "many bruises, some pretty old and some as old as three days." N.Q. told the doctor that " '[m]om' " caused his injuries. The doctor concluded the bruises were "[n]on-[a]ccidental [t]rauma."

Mother told DCFS that N.Q. suffered the injuries when he fell in the shower. She explained that she did not take him for medical treatment because he falls "all the time."

Mother also told DCFS that K.Q. was physically and emotionally abusive while they were in a relationship. According to mother, K.Q. was paranoid, and he would strike her in the face, force her to watch "gore" videos, and take her cell phone. When K.Q. left the house, he made mother stay in a room and log onto a computer to prove she was at home. He also forced her to carry a camera and record herself. When mother angered K.Q., he would order her to hit herself in the face.

K.Q. denied domestic violence with mother or that he suffered from mental health issues. He was generally uncooperative with DCFS and refused to provide his address or information related to school and work, which he claimed was " 'personal.' "

N.H. told a social worker that he and mother regularly used marijuana. N.H. said his parents abandoned him when he was around 13 years old, and he suggested he remained estranged from his family.

DCFS detained the children sometime around September 25, 2018. It placed N.Q. with his paternal aunt, and it placed L.H. in foster care.

On September 27, 2018, DCFS filed a petition to declare N.Q. and L.H. dependents of the juvenile court under Welfare and Institutions Code section 300.[1] The petition alleged N.Q. suffered numerous physical injuries that were consistent with non-accidental trauma. It further alleged that mother and N.H. used marijuana, which placed the children at risk of harm. DCFS subsequently amended the petition, adding allegations that mother and K.Q. have a history of domestic violence, and K.Q. has mental and emotional problems, including violent, aggressive, and erratic behavior, which render him incapable of providing N.Q. with regular care and supervision.

The court sustained the amended petition in part, including the allegation that K.Q. has mental and emotional problems. The court declared the children dependents and removed them from their parents' custody. It ordered K.Q. to complete a psychological assessment and psychiatric evaluation. It also granted him four hours of monitored visitation each week.

DCFS documented K.Q.'s visits in a series of status review reports during the reunification period. According to the reports, K.Q. called the child every day, had been consistently visiting

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[1] Undesignated statutory references are to the Welfare and Institutions Code.

since May 2019, and behaved in an age-appropriate manner with the child. N.Q.'s caregiver said K.Q. would buy the child toys and was affectionate with him during visits. K.Q. usually took N.Q. to Chuck E. Cheese or a store with educational books and toys for children.

Paternal grandmother, who monitored the visits, reported that K.Q. consistently visited the child and the visits went well. K.Q. usually took the child to "places to eat and/or play." She believed the interactions were positive and N.Q. was comfortable with K.Q. K.Q. similarly told DCFS the visits were "going well."

The parents did not substantially comply with their case plans by the end of the 18-month-long reunification period. K.Q., in particular, refused to undergo a psychological assessment or psychiatric evaluation, even after the juvenile court appointed an expert to examine him under Evidence Code section 730. Accordingly, on September 2, 2020, the court terminated reunification services and set a hearing under section 366.26.

DCFS filed a report on January 6, 2021, recommending adoption as the permanent plan for both children. In the report, DCFS noted that K.Q. maintained regular, consistent, and meaningful contact with N.Q., but his visits continued to be monitored due to his failure to obtain a psychological assessment and psychiatric evaluation. DCFS further noted that N.Q.'s caregiver said K.Q. is a "good father," and N.Q. said he liked visits with K.Q. because they play games. A DCFS social worker, however, reported that N.Q. did not appear to have a strong bond with his parents because he did not feel comfortable unless his caregivers were present.

DCFS submitted a status review report on February 9, 2021. According to the report, K.Q. continued to visit N.Q., but he agreed to pause the visits due to the Covid-19 pandemic.

The court conducted the permanency planning hearing on June 30, 2021. K.Q. submitted a report from an investigator who observed a recent visit with N.Q. According to the investigator, K.Q. and N.Q. talked, laughed, and had a good time during the visit. N.Q. was calm and comfortable, and he sat on K.Q.'s lap as they played with toys. N.Q. was very interested in interacting with K.Q., whom he referred to as "dad" and "papa [K.]." K.Q. offered to give N.Q. food and help him use the bathroom.

The parents urged the court not to terminate their parental rights. K.Q., in particular, argued the beneficial parental relationship exception to adoption applied because he had maintained regular and meaningful visitation with N.Q. K.Q. pointed out that he reported the abuse to the police and took N.Q. to the hospital. He also pointed out that N.Q. referred to him as "dad" and "papi."

The children's counsel and DCFS urged the court to terminate parental rights. The children's counsel argued the parents were merely friendly visitors to the children and did not occupy a parental role.

The court took the matter under submission and announced its ruling at a hearing on July 22, 2021. The court began by providing a brief summary of the case, including that the "parents were afforded numerous opportunities to complete the case plan, to reunify with the children, and, quite frankly, just failed to do so." The court also noted that K.Q. declined to participate in a section 730 evaluation.

The court proceeded to find the children were adoptable and there were no exceptions to adoption. The court noted that, in analyzing the issue, it "look[ed] for instruction in the Breanna S. case, 8 Cal.App.5th 636." In finding the beneficial parental relationship exception did not apply, the court explained that although K.Q. "has maintained visits. . . . [H]e has not played—occupied a parental role in [N.Q.'s] life. The visits are reported to go well. The child appears to enjoy the visits. But there's no evidence that these visits are anything different than an extended family member's visits, an uncle's visits or a cousin's visit[s]. [¶] In analyzing this case, we need to take a look at whether or not any benefit derived from the relationship that the children have with their parents outweighs the need for permanency. And, quite honestly, I looked, but I couldn't find any evidence that any such benefit outweighed the children's need for permanency. That's as to all parents."

Mother, K.Q., and N.H. timely appealed.[2]

DISCUSSION

K.Q. argues the juvenile court erred by terminating his parental rights because DCFS's reports were inadequate. He also contends the court relied on improper factors and case law in finding the beneficial parental relationship exception to adoption did not apply.[3] Mother and N.H. separately argue remand is necessary because the court and DCFS failed to comply with the inquiry requirements under ICWA and related state law.

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[2] Mother separately appealed the court's denial of a section 388 petition. We consolidated the appeals. Mother, however, does not raise any issues related to the section 388 petition.

[3] Mother joins K.Q.'s arguments.

1. *The court did not err in terminating K.Q.'s parental rights*

a. *Applicable law*

According to the procedure set forth in section 366.26, once the juvenile court terminates reunification services and determines a dependent child is adoptable—a finding not in dispute here—it must select adoption as the permanent plan and terminate parental rights unless it finds doing so would be detrimental to the child under one of several statutory exceptions. (§ 366.26, subd. (c)(1); *In re Caden C.* (2021) 11 Cal.5th 614, 630–631 (*Caden C.*).)

The beneficial parental relationship exception, at issue here, applies where the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) Our Supreme Court recently clarified the three elements a parent must prove, by a preponderance of the evidence, to establish the exception: (1) the parent's regular visitation and contact with the child; (2) the child's "substantial, positive, emotional attachment to the parent," "the continuation of which would *benefit* the child"; and (3) that the termination of "that attachment would be detrimental to the child even when balanced against the countervailing benefit of a new, adoptive home." (*Caden C., supra*, 11 Cal.5th at pp. 631, 636.)

In assessing whether terminating parental rights would be detrimental to the child, the juvenile court must perform a "case-specific inquiry," asking, "does the benefit of placement in a new, adoptive home outweigh 'the harm [the child] would experience from the loss of [a] significant, positive, emotional relationship with [the parent?]' [Citation.] When the

relationship with a parent is so important to the child that the security and stability of a new home wouldn't outweigh its loss, termination would be 'detrimental to the child *due to*' the child's beneficial relationship with a parent." (*Caden C., supra*, 11 Cal.5th at pp. 633–634.)

"A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*), disapproved on another ground in *Caden C., supra*, 11 Cal.5th at pp. 637–638, fns. 6–7.) Rather, the parent must show the relationship "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*).)

Rejecting a rationale applied by some appellate courts, the *Caden C.* court explained a parent's failure to make adequate progress with his or her case plan or "continued struggles" with issues that led to the dependency—standing alone—do not preclude application of the exception. (*Caden C., supra*, 11 Cal.5th at pp. 637–638.) A parent's struggles may be relevant, however, to the court's evaluation of the beneficial nature of the parent-child relationship. (*Ibid.*)

b. *K.Q. forfeited his arguments related to the adequacy of DCFS's report*

K.Q. argues DCFS failed to comply with its statutory duty to provide the court an assessment that includes a "review of the amount of and nature of any contact between the child and his or her parents or legal guardians and other members of his or her extended family since the time of placement." (§ 366.21, subd.

(i)(1)(B).) According to K.Q., DCFS's January 6, 2021 report was inadequate because it included only a single sentence related to his visits, it was six months old by the time of the section 366.26 hearing, and a social worker did not personally observe any visits.

DCFS contends K.Q. forfeited this issue by failing to raise it below. We agree. Generally, an appellant forfeits arguments he or she could have made, but did not make, in the lower court. (*People v. Saunders* (1993) 5 Cal.4th 580, 589–590.) K.Q. did not raise any concerns in the juvenile court regarding the adequacy of DCFS's report. Accordingly, he has forfeited the issue on appeal. (See *In re Aaron B.* (1996) 46 Cal.App.4th 843, 846 [a father waived the argument that an adoption assessment was inadequate by failing to raise the issue below]; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411 [a parent waived the argument that assessment reports were not sufficiently current]; *In re Brian P.* (2002) 99 Cal.App.4th 616, 623 (*Brian P.*) ["a parent may waive the objection that an adoption assessment does not comply with the requirements provided in section 366.21, subdivision (i)"]; *In re Urayna L.* (1999) 75 Cal.App.4th 883, 886 ["by failing to raise the *adequacy* of the report below, mother waived this issue"].)

K.Q. attempts to avoid forfeiture by characterizing his argument as a challenge to the sufficiency of the evidence, which is not subject to the general forfeiture rule. (*Brian P., supra*, 99 Cal.App.4th at p. 623.) He insists that, without an adequate report from DCFS, the juvenile court did not have enough information to determine whether the beneficial parental relationship exception to adoption applied. Therefore, he argues,

the court's order terminating his parental rights is not supported by substantial evidence.

In making this argument, K.Q. overlooks that he had the burden to prove the beneficial parental relationship exception. (*Caden C., supra*, 11 Cal.5th at p. 631.) Because the court found he failed to meet his burden, "it is misleading to characterize the . . . issue as whether substantial evidence supports the judgment." (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528, disapproved of on other grounds by *Conservatorship of O.B.* (2020) 9 Cal.5th 989, 1003, fn. 4.) Instead, the question on appeal is whether "the evidence compels a finding in favor of the appellant as a matter of law. [Citations.] Specifically, the question becomes whether the appellant's evidence was (1) 'uncontradicted and unimpeached' and (2) 'of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.' [Citation.]" (*Ibid.*) The adequacy of DCFS's report is not relevant to either question. Father's arguments related to the report, therefore, are not a challenge to the sufficiency of the evidence.

If K.Q. believed he could not meet his burden because DCFS's assessment was inadequate, he was obligated to raise the issue in the juvenile court. His failure to do so forfeits the issue on appeal.

c. *The juvenile court did not rely on improper factors and case law to terminate K.Q.'s parental rights*

K.Q. contends the juvenile court erroneously relied on several improper factors and case law in finding the beneficial parental relationship exception did not apply. First, he insists the court erred by considering his failure to complete his case plan, despite the lack of evidence showing it affected his

relationship with N.Q. Relatedly, he argues the court erred by relying on *Breanna S., supra*, 8 Cal.App.5th 636, which the California Supreme Court disapproved of to the extent it held the beneficial parental relationship exception "can only apply when the parent *has* made sufficient progress in addressing the problems that led to dependency." (*Caden C., supra*, 11 Cal.5th at p. 637 & fn. 6.)

Contrary to K.Q.'s claims, the record does not show the juvenile court relied on his failure to complete his case plan or make progress in addressing the problems that led to dependency. Although the court mentioned K.Q.'s refusal to undergo a psychological evaluation and his failure to reunify with N.Q., it did so in the context of providing a brief summary of the case. The court separately considered whether the beneficial parental relationship exception applied and provided several reasons why it did not, none of which concerned K.Q.'s failure to complete his case plan or make progress addressing the issues that led to dependency. Moreover, because the court did not rely on those factors, its reference to *Breanna S., supra*, 8 Cal.App.5th 636 was harmless.

K.Q. next argues the court erred by stating he did not " 'occup[y] a parental role' " in N.Q.'s life. Relying on *In re L.A.-O.* (2021) 73 Cal.App.5th 197 (*L.A.-O.*), he insists the term " 'parental role' " is ambiguous, making it impossible to know whether the court considered factors that are inconsistent with the standard the Supreme Court articulated in *Caden C.*

In *Autumn H., supra*, 27 Cal.App.4th 567, the court held the beneficial parental relationship exception "applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child

to parent." (*Id*. at p. 575.) The court explained that "[i]nteraction between natural parent and child will always confer some incidental benefit to the child. The significant attachment from child to parent results from the adult's attention to the child's needs for physical care, nourishment, comfort, affection and stimulation. [Citation.] The relationship arises from day-to-day interaction, companionship and shared experiences." (*Ibid*.)

The court in *In re Beatrice M.* (1994) 29 Cal.App.4th 1411 subsequently concluded frequent and loving contact between a parent and child is not sufficient to create a significant, positive, emotional attachment. (*Id*. at pp. 1418–1419.) Instead, the parent must occupy a "parental role" in the child's life. (*Ibid*.) Accordingly, the court held the beneficial parental relationship exception did not apply where the parent's relationship with the child was "akin to that of an extended family member." (*Id*. at p. 1420.) Following *Beatrice M.*, courts have frequently stated a parent must show he or she occupies a parental role in the child's life for the beneficial parental relationship exception to apply. (See, e.g., *Breanna S., supra*, 8 Cal.App.5th at p. 646; *In re C.F.* (2011) 193 Cal.App.4th 549, 555; *In re L.Y.L.* (2002) 101 Cal.App.4th 942, 954; *In re Derek W.* (1999) 73 Cal.App.4th 823, 827; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

In *Caden C.*, the Supreme Court agreed with *Autumn H.* that the beneficial parental relationship exception requires a significant, positive, emotional attachment from child to parent. (*Caden C., supra*, 11 Cal.5th at p. 633.) The high court, however, did not address whether a parent must occupy a "parental role" in the child's life in order to form such an attachment.

Nevertheless, the court in *L.A.-O.* encouraged juvenile courts to stop using the words " 'parental role' " in the wake of

Caden C. (*L.A.-O., supra*, 73 Cal.App.5th at p. 211.) The court explained that, although the words can be shorthand for a " 'substantial, positive, emotional attachment,' " they have several other potential meanings that conflict with *Caden C.* (*L.A.-O.*, at pp. 210–212.) The court went on to reverse an order terminating parental rights where the juvenile court refused to apply the beneficial parental relationship exception because the parents " 'ha[d] not acted in a parental role in a long time,' " while the adoptive parents " 'ha[d] been acting in a parental role.' " (*Id*. at pp. 201, 211–212.) The court reasoned that, given the juvenile court's "reference to a long time, it seems to have meant that [the parents] were not capable of taking custody, or had not been good parents, or had not been providing necessary parental care. That would be erroneous [under *Caden C.*]." (*Id*. at p. 212.)

Here, the record does not show the court relied on factors that *Caden C.* deems irrelevant. Unlike in *L.A.-O.*, the court's remarks do not imply that it considered whether K.Q. was capable of taking custody, had been a good parent, or had been providing necessary parental care. Instead, the court explained that K.Q. failed to occupy a parental role because, although his visits went well and N.Q. seemed to enjoy them, there was no evidence showing they were "anything different than an extended family member's visits." This conception of "parental role" is consistent with *Caden C.* (See *L.A.-O., supra*, 73 Cal.App.5th at p. 211 [it is consistent with *Caden C.* to define " 'parental role' " as not merely frequent and loving contact, pleasant visits, being a friendly visitor, or having an emotional bond].) It is apparent that the court used the term as shorthand for the sort of significant, positive, emotional attachment that is required

for the beneficial parental relationship exception to apply. Accordingly, the court's use of the term "parental role" was not improper. (See also *In re A.L.* (2022) 73 Cal.App.5th 1131, 1157 ["the strength and quality of the parent's relationship with the child, including whether that parent has a parental role, is a relevant consideration to the court's detriment finding"].)

2. *DCFS and the court failed to conduct an adequate initial inquiry under ICWA and section 224.2*

a. *Background*

DCFS noted in the detention report that a social worker asked the parents if they had Indian ancestry, and all three denied it. DCFS also attached to the initial petition a form stating it made an Indian child inquiry for both children and discovered no Indian ancestry.

On September 28, 2018, mother, K.Q., and N.H. each submitted a Judicial Council form ICWA-020, Parental Notification of Indian Status (ICWA-020 form) indicating they have no known Indian ancestry. The same day, all three parents appeared at the detention hearing. N.Q.'s paternal aunt and grandfather were also present. The court mentioned ICWA only once during the hearing, noting "it appears ICWA is no." The court's minute order states it found no reason to know N.Q. and L.H. are Indian children.

The record does not show that the court or DCFS performed any ICWA inquiries after the detention hearing. DCFS's subsequent reports simply state, "The Indian Child Welfare Act does not apply. On 9/28/2018 the Court found that there is no reason to believe that these children are children as defined under I.C.W.A."

b. *Applicable law and standard of review*

Congress enacted ICWA " 'to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture.' " (*In re Isaiah W.* (2016) 1 Cal.5th 1, 7–8 (*Isaiah W.*); see 25 U.S.C. § 1902.) Both ICWA and state law define an " 'Indian child' " as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); § 224.1, subd. (a) [adopting federal definition].)

"Because it typically is not self-evident whether a child is an Indian child, both federal and state law mandate certain inquiries to be made in each case. These requirements are sometimes collectively referred to as the duty of initial inquiry." (*In re Benjamin M.* (2021) 70 Cal.App.5th 735, 741 (*Benjamin M.*).)

State law and federal regulations implementing ICWA require juvenile courts to ask all participants in a dependency case whether they know or have reason to know the child is an Indian child and to instruct the parties to inform the court "if they subsequently receive information that provides reason to know the child is an Indian child." (25 C.F.R. § 23.107(a); § 224.2, subds. (b), (c); Cal. Rules of Court, rule 5.481(a)(2).) The California Rules of Court also require juvenile courts to order the parents to complete an ICWA-020 form. (Cal. Rules of Court, rule 5.481(a)(2)(C).)

As of January 1, 2019, whenever DCFS takes a child into its temporary custody, California law requires it to ask "the child, parents, legal guardian, Indian custodian, extended family members, others who have an interest in the child, and the party reporting child abuse or neglect, whether the child is, or may be, an Indian child." (§ 224.2, subd. (b).) Extended family members include adults who are the child's "grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent." (25 U.S.C. § 1903(2); § 224.1, subd. (c) [adopting federal definition].)

If the initial inquiry gives the juvenile court or DCFS a "reason to believe that an Indian child is involved," then their duty to "make further inquiry regarding the possible Indian status of the child" is triggered. (§ 224.2, subd. (e); *Benjamin M., supra*, 70 Cal.App.5th at p. 742.) And, once there is a "reason to know" an Indian child is involved, formal notice under ICWA must be given to the children's "parents or legal guardian, Indian custodian, if any, and the child's tribe." (§ 224.3, subd. (a); Cal. Rules of Court, rule 5.481(c)(1); 25 U.S.C. § 1912(a).)

We review the juvenile court's ICWA findings for substantial evidence, but independently determine whether the requirements of ICWA have been satisfied when the facts are undisputed. (*In re D.F.* (2020) 55 Cal.App.5th 558, 565; *In re D.S.* (2020) 46 Cal.App.5th 1041, 1051.)

c. *Application*

The record does not show that the juvenile court ever asked the case participants whether they knew or had reason to know the children were Indian children. Nor does the record show the court instructed the participants to inform it if they subsequently received information that provides reason to know the children

are Indian children.[4] The court, therefore, failed to comply with its duty of initial inquiry under federal and state law. (See 25 C.F.R. § 23.107(a); § 224.2, subds. (b), (c); Cal. Rules of Court, rule 5.481(a)(2).)

DCFS, moreover, did not question the children's extended family members about the minors' Indian status, despite many opportunities to do so. The children's maternal grandmother and N.Q.'s paternal aunt, grandmother, and grandfather were known and available to DCFS throughout the dependency case. DCFS placed N.Q. with his paternal aunt, who lived with the paternal grandparents. The paternal grandparents monitored N.Q.'s visits with K.Q., and DCFS spoke with them several times. Maternal grandmother was also in contact with DCFS, filed a section 388 petition, and appeared at one of the hearings. The record, however, does not show that DCFS ever asked these relatives about the children's Indian status, as required under section 224.2. (§ 224.2, subd. (b).) Nor does the record show that DCFS attempted to contact any of N.H.'s relatives, even though he reportedly "re-kindle[d]" his relationship with his family during the reunification period. Accordingly, DCFS did not fulfill its initial and continuing duty of inquiry under section 224.2, subdivision (b). (See *In re A.C.* (2022) 75 Cal.App.5th 1009, 1015 [DCFS did not comply with its " 'obligation to make a meaningful effort' " to ask extended family members—who "were readily available to consult"—about child's possible Indian ancestry];

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[4] The ICWA-020 forms, however, instructed the parents that "[i]f you get new information that would change your answers, you must let your attorney, all the attorneys on the case, and the social worker or probation officer, or the court investigator know immediately and an updated form must be filed with the court."

In re Darian R. (2022) 75 Cal.App.5th 505, 507, 509 [DCFS erred in failing to ask aunt and grandfather, with whom it had contact, about children's potential Indian ancestry]; *In re H.V.* (2022) 75 Cal.App.5th 433, 436, 438 [DCFS failed to discharge its "first-step inquiry duty" when it did not ask extended family members—whom it had interviewed—about child's possible Indian ancestry].)

DCFS implicitly concedes these errors. Nevertheless, it insists remand is not necessary because the errors were harmless. According to DCFS, any additional inquiry was not likely to bear meaningfully upon the children's status as Indian children because the parents denied any Indian ancestry on their ICWA-020 forms. (See *Benjamin M., surpa*, 70 Cal.App.5th at p. 744 ["a court must reverse where the record demonstrates that the agency has not only failed in its duty of initial inquiry, but where the record indicates that there was readily obtainable information that was likely to bear meaningfully upon whether the child is an Indian child"].)

We agree with DCFS that a parent's responses on an ICWA-020 form will often provide strong evidence of the child's Indian status. The definition of " 'Indian child' " is very narrow: an unmarried person under age eighteen who either (a) is "a member of an Indian tribe" or (b) "is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); see also § 224.1, subds. (a), (b).) Moreover, tribal membership typically requires an affirmative act by the enrollee or the enrollee's parents. (See Indian Child Welfare Act Proceedings, 81 Fed.Reg. 38778-01, 38783; Bureau of Indian Affairs, U.S. Dept. of the Interior, Guidelines for Implementing the Indian Child Welfare Act

(Dec. 2016) p. 10.) Given these requirements, the parents will generally be in the best position to know whether a minor is an Indian child. As a result, in most cases where the parent's responses on an ICWA-020 form do not reveal a reason to believe the minor is an Indian child, speaking with that parent's family members will not reveal information that might meaningfully affect the court's ICWA determination.

There are, however, conceivable scenarios where a parent's responses on an ICWA-020 form will not be definitive. A grandparent, for example, might have enrolled the parent in an Indian tribe while an infant but never told the parent. A parent might also lie about the child's membership status if the parent, for whatever reason, does not want the tribe involved in the proceedings. Of course, these are exceptional circumstances and likely very rare. Nevertheless, because ICWA seeks to protect Indian tribes that are absent from the proceedings and did not have an opportunity to develop the record, we must at least consider these potential circumstances when determining whether the court's and DCFS's failures require us to conditionally affirm the orders and remand for compliance with ICWA.

In this case, there are several reasons why the parents' ICWA-020 forms do not carry the same weight as they might in other cases. N.H. reported that his parents abandoned him when he was a minor, making it more likely he would be unaware of his Indian ancestry or tribal membership. Moreover, because the court never directly asked the parents about their children's Indian status, it had limited information to judge the credibility of their responses on the forms. There is reason to be skeptical of K.Q.'s responses, in particular, given his history of paranoia

and refusal to reveal basic personal information throughout the dependency case. Under the unique circumstances of this case, we cannot say the court's and DCFS's failures to comply with ICWA's inquiry requirements were harmless.

We acknowledge that remanding the matter to comply with ICWA will delay the children's permanent plan of adoption. We are also mindful that this case has been pending for several years. Nevertheless, our high court has explained that the federal and state laws implementing ICWA "were clearly written to protect the integrity and stability of Indian tribes despite the potential for delay in placing a child." (*Isaiah W., supra*, 1 Cal.5th at p. 12.)

DISPOSITION

We conditionally affirm the juvenile court's orders terminating parental rights. The case is remanded to the juvenile court to comply with its inquiry duties under federal and state law. The court shall also order DCFS immediately to comply with the inquiry provisions of section 224.2, consistent with this opinion, and update the court on its investigation within 30 days of the remittitur. As part of its inquiry, DCFS shall attempt to contact extended family members for whom it already has contact information. It shall also attempt to obtain contact information for N.H.'s relatives and, if successful, attempt to contact those relatives. After ensuring DCFS has complied with the inquiry—and, if applicable, notice—provisions of ICWA and related California law, the juvenile court shall determine whether ICWA applies. If the court determines ICWA does not apply, the orders terminating the parents' parental rights shall remain in effect. If the court determines ICWA

does apply, it shall vacate its orders terminating parental rights and proceed in conformity with ICWA and related state law.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

I concur:

LAVIN, J.

EDMON, J., Dissenting

I agree with the majority's conclusion that K.Q. failed to establish the beneficial parental relationship exception to adoption. I write separately, however, because I disagree with the majority's conclusion that the Los Angeles County Department of Children and Family Services (DCFS) failed to comply with its duties of inquiry under the Indian Child Welfare Act of 1978 (ICWA) and related state law implementing ICWA (Welf. & Inst. Code, § 224 et seq.).[1]

In my view, this court should review compliance with ICWA under a hybrid substantial evidence/abuse of discretion standard, reviewing for substantial evidence whether there is reason to know a child is an Indian child within the meaning of ICWA, and for abuse of discretion a juvenile court's finding that an agency conducted a "proper and adequate" ICWA inquiry. In this case, there is no evidence that the children are Indian children. To the contrary, DCFS attached an ICWA-010 form to the petition stating that a social worker had asked the parents if they had Indian ancestry, and all three denied it; and mother, K.Q., and N.H. all submitted ICWA-020 forms stating they had no known Indian ancestry. No contrary evidence appears in the record. Thus, substantial evidence supports the juvenile court's conclusion that there is no reason to know N.Q. and L.H. are Indian children.

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[1] All subsequent undesignated statutory references are to the Welfare and Institutions Code.

Further, I believe the juvenile court did not abuse its discretion by concluding that DCFS exercised due diligence and conducted an adequate ICWA inquiry. (§ 224.2, subd. (i)(2).) In reviewing a juvenile court's ICWA findings for abuse of discretion, I believe the key inquiry should be whether the ICWA inquiry conducted has reliably answered the question at the heart of the ICWA inquiry: Whether a child involved in a proceeding "is or may be an Indian child" (§ 224.2, subd. (a))—that is, whether he or she is either (a) "a member of an Indian tribe" or (b) "is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4); see also § 224.1(a)–(b); Indian Child Welfare Act Proceedings, 81 Fed.Reg. 38778, 38795 (June 14, 2016) (BIA ICWA Proceedings) ["The statute specifies that if the child is not a Tribal member, then the child must be a biological child of a member and be eligible for membership, in order for the child to be an 'Indian child.' "].) In other words, the focus of the court's analysis should not be on the number of individuals interviewed, but on whether the agency's ICWA inquiry has yielded reliable information about a child's possible tribal affiliation.

As the majority notes, "ICWA does not apply simply based on a child or parent's Indian ancestry." (U.S. Dept. of Interior, Bureau of Indian Affairs, Guidelines for Implementing the Indian Child Welfare Act (Dec. 2016) (BIA Guidelines), p. 10 <https://perma.cc/3SV2-6KKV> (as of July 6, 2022).) Instead, the definition of "Indian child" is "based on the child's *political ties* to a federally recognized Indian Tribe, either by virtue of the child's own citizenship in the Tribe, or through a biological parent's citizenship and the child's eligibility for citizenship." (BIA ICWA Proceedings, *supra*, 81 Fed.Reg. at p. 38795, italics added.) Thus,

an Indian child is one with a tribal affiliation, not merely Indian ancestry.

Because tribal membership typically requires an affirmative act by the enrollee or her parent (see BIA ICWA Proceedings, 81 Fed.Reg. at p. 38783), a child's parents will, in most cases, be a reliable source for determining whether a child is an Indian child. The parent also will usually be the best source of information regarding his or her own membership status, since in most cases a parent will have to have actively sought out membership in order to be a tribal member. I therefore believe a juvenile court may find an ICWA inquiry was adequate even if an agency has not interviewed some available family members.

In the present case, I find no reason to doubt the reliability of the juvenile court's determination that N.Q. and L.H. are not Indian children. N.Q.'s parents (mother and K.Q.) remained close with their extended families; indeed, K.Q.'s sister and father appeared at the detention hearing, and K.Q.'s mother monitored his visits with N.Q. In view of mother's and K.Q.'s intact relationships with their families, the possibility that either parent might unknowingly be a member of an Indian tribe appears trivially small. L.H. presents a closer case because his father, N.H., was abandoned by his own parents when he was about 13 years old. Still, N.H. lived with his parents into his teenage years, reportedly rekindled his relationship with his family during the reunification period, and expressed no uncertainty about his own ancestry. Further, no objection was made below to the juvenile court's ICWA finding, and no parent has demonstrated on appeal that it is reasonably probable that any error in failing to inquire of extended family members affected the accuracy of the juvenile court's ICWA finding. I thus

would unconditionally affirm the orders terminating parental rights.

EDMON, P. J.